Supreme Court, U.S.
FILED

No. 01 643 OCT 04 2001

OFFICE OF THE CLERK

In The
SUPREME COURT OF THE UNITED STATES

*

BRYAN HILVETY,

Petitioner,

v.

WORLD OF POWER SPORTS, INC., MIKE JACKSON, in his official capacity as an employee of World of Power Sports, Inc., and GARY BROWN, in his official capacity as an employee of the Internal Revenue Service.

Respondents.

*

On Petition For Writ of Certiorari To The United States Court of Appeals For The Seventh Circuit

*

PETITION FOR WRIT OF CERTIORARI

Brian Hilvety
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217-768-3982

QUESTION(S) PRESENTED

1. **Petitioner's claim surrounds 26 U.S.C. § 3402(p)(3) where his employer could not withhold property owed him unless Petitioner agreed to the withholding. It is undisputed that his employer is a "withholding agent" for both the United States and the State of Illinois. Since the Fifth Amendment specifically states that no person shall be deprived of their property without due process and that section 3402(p)(3) relies upon the term "voluntary withholding agreement," as it's language also includes the phrase "if the person making the payment and the person receiving the payment agree to such withholding." Does the taking of money from Petitioner's pay by the withholding agent under the claim it is directed by the United States, regardless of Petitioner's agreement conditions, rise to the level of "deprivation of property without due process of law?"**

2. **Since Congress promulgated 26 U.S.C. § 3402(a) which states that "except as otherwise provided in this section..." and that clearly section 3402(p)(3) is "in this section," whether a withholding agreement under section 3402(p)(3) provides a exception that section 3402(a) is to be governed by?**

3. **Whether the Internal Revenue Service can direct a portion of a persons property to be taken from payment owed them absent any court judgment, an agreement to do so between the person making and the persons receiving the payment, and over that person's objections, when the Fifth Amendment guarantees "no person shall be deprived of their.... property without due process of law?**

LIST OF PARTIES

[ ]All parties appear in the caption of the case on the cover page.

[X]All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

Mike Jackson
I.R.S. Agent Gary Brown
United States

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue in review of the judgement below.

*

OPINIONS BELOW

The orders of the United States District Court appear at Appendix to the petition. App.at 1

The orders of the United States Court of Appeals for the Seventh Circuit appear at Appendix to the petition. App. at 4

*

JURISDICTION

The date on which the United States District Court issued it order; November 1, 2000.

The date on which the United States Court of Appeals for the Seventh Circuit Affirmed District Court's Order; July 6, 2001.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1651(a).

*

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constituitonal Provisions involved is The Fifth Amendment specifically involving deprivation of property without due process of law. The Statutory Provision is 26 U.S.C. § 3402(p)(3).

*

THIS PETITION IS IN AID OF APPELLATE JURISDICTION

*

STATEMENT OF THE CASE

This his case brings the issue of whether the taking or withholding from an "employees" payment from the employer requires an agreement in writing between the employee and the employer. If no agreement exists to withhold, then whether the taking of Petitioner's property by the employer at the direction of the United States Internal Revenue Service amounts to deprivation of Petitioner's property. It follows that if the answer is yes, then the taking of such property should be subject to the due process provision of the fifth amendment prior to such deprivation legally being allowed to occur.

This appeal is from a final order and judgment wherein the District Court arbitrarily dismissed Brian L. Hilvety's Complaint against World Power Sports, Inc., Mike Jackson, and Gary Brown, in his official capacity as an employee of the Internal Revenue Service on grounds Petitioner had alleged no facts which give rise to a claim which is even minimally plausible. In short order, while the Court was digesting the merits of a Motion for Default Judgment, since no party to the proceeding entered any appearance or opposition, and after the Court concluded they were all served properly, the Court dismissed the action finding it lacked "subject matter jurisdiction."

On July 6, 2001, the Seventh Circuit entered its final order after allowing the government to enter at the Seventh Circuit, even though they had entered no appearance at the District Court, affirming the lower court decision and imposing $ 2000 sanctions against Petitioner. The only statement made in the order which addresses Petitioner's appeal is where the Seventh Circuit stated "Hilvety's claim is 'wholly insubstantial and frivolous.'" *APP. at 5*

Brian L. Hilvety performed services for World Power Sports, Inc. in exchange for monies worth. World Power Sports,

Inc., designated Mike Jackson to handle all withholding, as a withholding agent for all duties involving World Power Sports, Inc. and the Internal Revenue Service. Gary Brown is the Internal Revenue Service representative "agent" assigned to the territory in which both Petitioner and Defendants Jackson and World Power Sports, Inc. reside.

Brian Hilvety was an employee of World of Power Sports. Under 26 U.S.C. § 3402(p)(3) and the due process clause of the Fifth Amendment, involving deprivation of property, Brian Hilvety made a legal request not to agree to be withheld from his property owed him by World Power Sports,, Inc. World Power Sports, Inc., and through Mike Jackson, forwarded Petitioner's legal agreement not to be withheld from to the Internal Revenue Service, Gary Brown for opinion. Petitioner objected as to relevance.

Gary Brown told Petitioner he was awaiting an "answer" from up above. The only answer ever told Petitioner by Mike Jackson was that Gary Brown told him personally to continue to deprive Petitioner of his property over Petitioner's objections in violation of due process.

After many months waiting for World Power Sports, Inc. to hear from Gary Brown or the Internal Revenue Service, and the deprivation of Petitioner's property continued as if no agreement not to be withheld from existed, Petitioner commenced civil action against World Power Sports, Inc., Mike Jackson and Gary Brown in his official capacity

Petitioner commenced action at the District Court seeking relief surrounding the unconstitutional deprivation of his property. Agent Brown acted reckless and intentional with disregard for 26 U.S.C. § 3402(p)(3).

The District Court and Seventh Circuit erroneously relied upon a standard set when parties sued "did not have the wit to point out the deficiencies in the plaintiff's case - litigation not grounded in federal law." The District Court's final order borders absurd, is clear error and intentional abuse of power.

There is no issue as to service. The district court found the defendants were all served properly. After notice and demand to answer Petitioner, Petitioner moved for Default Judgement due to the fact that the time for either of them to answer Petitioner's complaint had expired by many days.

The District Court in Urbana took from March 16, 2000, till November 1, 2000, to determine that it lacked subject matter jurisdiction. After several months of inaction on the part of the District Court, Petitioner filed for mandamus relief with the Seventh Circuit Court of Appeals seeking an order instructing the District Court to enter judgment in Petitioner's favor since neither of the defendants had any answer in support of their action to deprive Petitioner of his property in opposite to 26 U.S.C. § 3402(p)(3) and the Fifth Amendment.

After months more, the District Court on November 1, 2000, dismissed Petitioner's complaint finding it lacked subject matter jurisdiction.

During the pendency of the Appeal in the Seventh Circuit, the Seventh Circuit denied the mandamus with no explanation given. Petitioner concedes it became moot by the severe passage of time.

*

REASONS FOR GRANTING THIS WRIT

1. Petitioner's claim surrounds 26 U.S.C. § 3402(p)(3) where his employer could not withhold property owed him unless Petitioner agreed to the withholding. It is undisputed that his employer is a "withholding agent" for both the United States and the State of Illinois. Since the Fifth Amendment specifically states that no person shall be deprived of their property without due process and that section 3402(p)(3) relies upon the term "voluntary withholding agreement," and as it's

language also includes the phrase "if the person making the payment and the person receiving the payment agree to such withholding." Does the taking of money from Petitioner's pay by the withholding agent, under the claim it is directed by the United States, regardless of Petitioner's agreement conditions, rise to the level of "deprivation of property without due process of law?"

The District Court correctly concluded in its November 1, 2000, order that each defendant named in the Complaint had been properly served with the Summons and Complaint. *APP. at 1*

The District Court decided to rely upon Fed.R.Civ.Pr. 12(h)(3) to dismiss the action based upon the term "otherwise," giving the District Court the authority to determine the merits of a complaint which all defendant's had defaulted to.

The District Court decided that Petitioner's claims were "wholly insubstantial and frivolous" and "absolutely devoid of merit." App. at 2 Then the District Court makes a startling revelation. It finds Petitioner's claim is:

> "to the best understanding of the Court, Plaintiff contends that the Fifth Amendment right against self-incrimination prevents him from being required to sign federal tax forms, such as Form 1040 and Form w-4. As a result, Plaintiff states he has not agreed to have wages withheld from his paycheck for taxes. Furthermore, Plaintiff believes he is not required to file any tax forms with the government and will never be liable for any Federal Income Tax for the wages he receives from his employer because this would violate his Fifth Amendment right against self-incrimination. Because Plaintiff has alleged no facts which give rise to a claim which is even minimally plausible, this Court lacks subject matter jurisdiction." *APP-2*

First, the District Court has totally misstated what Petitioner had claimed. Petitioner claimed that the action taken by Agent Brown in conjunction with the participation of Mr. Jackson was

resulting in the deprivation of property which clearly belonged to Petitioner and without consent deprivation could not be lawful.

Petitioner listed in his complaint a section entitled "facts" that pursuant to 26 U.S.C. § 3402(p)(3), Petitioner requested that World Power Sports, Inc. "agree" not to withhold any property belonging to Petitioner and owed to Petitioner from World Power Sports, Inc. *Parargraph* 14 of Complaint.

Not only does Petitioner allege facts giving rise to "a claim," this allegation of fact gives rise to numerous claims to which the District Court had subject matter jurisdiction.

In Petitioner's case, the District Court did not address the relevance of the allegations of fact and each claim made against each of the defendants. In short, the Court merely stated "Plaintiff has alleged no facts which give rise to a claim which is even minimally plausible." *APP -2.*

The District Court and Seventh Circuit Court of Appeals failed in its order to address the merits of 26 U.S.C. § 3402(p)(3) and its application to consideration of the deprivation of property alleged by Petitioner's Complaint. If section 3402(p)(3) is part of the due process workings to withhold property otherwise belonging to Petitioner and Petitioner has not agreed within this due process, what authority does the United States have or a withholding agent have to deprive Petitioner of his property without complying with the agreement request within this due process provision?

Both the District Court and Seventh Circuit Court of Appeals is saying that Petitioner has no right to terminate any withholding agreement or "agree not to be withheld from," and this such construction is repugnant to the confines of 26 U.S.C. § 3402(p)(3).

All facts in this case are uncontested by all defendants. They are in default and if it were not for the District Court's erroneous spacious order, Defendant would not still be deprived of his property.

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprize interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950); see also Tulsa Prof'l Collection Serv., Inc. v. Pope, 485 U.S. 478, 484 (1988) SAMS v. CITY OF MILWAUKEE, 117 F.3d 991 (7th Cir. 1997)

In the instant action, Petitioner alleges that "Petitioner's pay continues to be reduced by withholding..." There is no question this amounts to deprivation and Petitioner has a right to seek the return of this property as he so complained in the District Court. To say otherwise would be to read the meaning of the term "agree" and the statutory heading for "voluntary withholding agreement" repugnant to the common usage of those words.

The substantiality doctrine has been totally abused by both the District Court and Seventh Circuit Court of Appeals. This doctrine has two tiers of review involving subject matter jurisdiction and failure to state a claim. There is however some "confusion that may arise because of the similarities in their application." *Id*

"At the first tier of review, the district court must assess the substantiality of the constitutional or federal statutory allegations of the complaint to determine whether they are immaterial to the true thrust of the complaint and thus made solely for the purpose of obtaining jurisdiction, or whether they are "wholly insubstantial and frivolous." Bell, 327 U.S. at 681-82, 66 S.Ct. at 775-76. If either of these conditions exist, the complaint must be dismissed for want of subject matter jurisdiction."

"By its own terms, the standard for dismissal is a rigorous one." Winslow v. Walters, 815 F.2d 1114, 1116 (7th Cir. 1987); 13B Wright, Miller & Cooper, Federal Practice and Procedure, Jurisdiction 2d § 3564 (2d ed. 1984). The Supreme Court has repeatedly employed exacting adjectives to define the degree of insubstantiality required before a case is to be dismissed on these

grounds - a claim must be "wholly," "obviously," or "plainly" insubstantial or frivolous; it must be "absolutely devoid of merit" or "no longer open to discussion." Hagans, 415 U.S. at 536-39, 94 S.Ct. at 1377-80 (citing cases). As these adjectives imply, insubstantiality dismissals should be applied only in extraordinary circumstances. "[I]f there is any foundation of plausibility to the federal claim federal jurisdiction exists . . . Jurisdiction is not lost because the court ultimately concludes that the federal claim is without merit." 13B Wright, Miller & Cooper, Federal Practice and Procedure, Jurisdiction 2d § 3564 (2d ed. 1984).

"The district court's charge then, is to review the face of the complaint in light of the relevant constitutional or statutory provisions and the pertinent case law interpreting those provisions." Crowley Cutlery, 849 F.2d at 278. This review may be conducted sua sponte, and may be done at an early stage in the proceedings. Franklin v. State of Oregon, State Welfare Division, 662 F.2d 1337, 1342 (9th Cir. 1981) (if the court lacks subject matter jurisdiction, summons need not be issued). It bears emphasizing that a plaintiff need only make a "short and plain statement of the claim showing that [he or she] is entitled to relief." Fed.R.Civ.P. 8(a)(2). While all complaints should be liberally construed in the spirit of Rule 8(f) ("All pleadings shall be so construed as to do substantial justice"), the mandate of Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), is applicable to a district court's substantiality review of a pro se plaintiff's complaint. Thus the district court is required to liberally construe the pro se plaintiff's pleadings, "however inartfully pleaded." Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 292, 50 L.Ed.2d 251 (1976) (reaffirming the mandate of Haines). See also Hughes v. Rowe, 449 U.S. 5, 9, 101 S.Ct. 173, 175, 66 L.Ed.2d 163 (1980) (reviewing and applying the "settled law" arising from Haines). The purpose of this more solicitous review is to insure that pro se pleadings are given "fair and meaningful" consideration. Matzker v. Herr, 748 F.2d 1142, 1146 (7th Cir. 1984) (quoting Caruth v. Pinkney, 683 F.2d 1044, 1050 (7th Cir. 1982)).

"If the district court determines that the plaintiff's claims are sufficiently substantial to invoke federal jurisdiction, the complaint, as previously noted, must be initially entertained by the district court." Bell, 327 U.S. at 681-82, 66 S.Ct. at 775-76. At this second tier, the complaint may be dismissed for failure to state a claim according to Fed.R.Civ.Pr.Rule 12(b)(6) only if "it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Hughes v. Rowe, 449 U.S. at 9, 101 S.Ct. at 175 (citing Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 595, 30 L.Ed.2d 652 (1972)).

When the plaintiff's complaint is meritorious enough to proceed to this second tier, the district court's authority to dismiss the complaint sua sponte is, to a certain degree, limited by the requirements of the Federal Rules. For example, this court has consistently interpreted Fed.R.Civ.Pr.Rule 4(a) to require that summons be issued and served before the complaint may be dismissed. Nicholes v. Schubert, 499 F.2d 946, 947 (7th Cir. 1974) (per curiam) (sua sponte dismissal of complaint prior to the issuance of summons and service of process is improper "in light of the mandate of Rule 4(a) that the clerk `shall forthwith issue a summons.'"); Dear v. Rathje, 485 F.2d 558 (7th Cir. 1973) (same); Vina v. Hub Electric Co., 480 F.2d 1139, 1140 (7th Cir. 1973) (same). Our more recent case law has further required that a plaintiff be given notice and an opportunity to respond before the complaint may be dismissed at this stage in the proceedings. Bryan v. Johnson, 821 F.2d 455, 457-58 (7th Cir. 1987). See also Neitzke, ___ U.S. ___ at ___, 109 S.Ct. 1827, 1834 (plaintiff with an arguable claim is ordinarily accorded notice of a motion to dismiss and an opportunity to amend the complaint). In Bryan, this court held that where plaintiff was required to pay a partial filing fee rather than being allowed to proceed in forma pauperis, it was error to dismiss the action sua sponte prior to the issuance of summons and service of process:

In this case, the District Court did not proceed promptly or at an early stage of the case. It took the District Court 1 year to

decide it lacked subject matter jurisdiction.

Does deprivation of property involving the government and an employer, from an un- consenting employee, rise to the level of "minimally plausible" as set forth in the District Court's order? It certainly does. Does a claim of Fifth Amendment violations which have resulted in other Fifth Amendment violations rise to the level of "minimally plausible?" Yes, it does. Is it minimally plausible to accept that 26 U.S.C. § 3402(p)(3) relies upon the term "voluntary" to promulgate "withholding from wages?" It cannot be plausibly interpreted otherwise.

Is it minimally plausible for Petitioner to claim that his property has been taken in violation of the laws of the United States? Yes, most certainly. Did Petitioner claim all this in his complaint? Yes and you can read it for yourself.

If the government can threaten an employer not to honor a "withholding agreement" which agrees not to withhold, then 3402(p)(3) and the deprivation of property without due process of law provision mandated within the fifth Amendment are meaningless.

In short, even though it can not be minimally and plausibly determined as to how the District Court arrived at its opinion that Plaintiff has alleged no facts which give rise to "a" claim, and even though there are numerous claims made in Petitioner's Complaint which each defendant was given a right to contest and to which they chose to stand moot, if this Court were to find that the facts of deprivation of property have occurred in violation of the due process provision of the Fifth Amendment, and that defendant World Power Sports, Inc. and Mike Jackson violated 26 U.S.C. § 3402(p)(3), then this Court must reject and repudiate the District Court's 1 year substantiality test which it did not even address.

The District Court did not properly construe Petitioner's Complaint. Since the defendants have all averred to the allegations as true, the facts alleged did have a substantial basis in law and fact and the District Court clearly had subject matter jurisdiction to enter a Order for Default against the Defendants.

Plaintiff alleged that he had been deprived of property by both World Power Sports and Mike Jackson, and that he was aware that Gary Brown was instructing both World Power Sports and Mike Jackson not to honor Petitioner's requested agreement not to be withheld from, and because the property at issue undisputably belonged to Petitioner, Petitioner clearly stated facts which gave rise to a claim under current federal law.

How could a purported finding by the Court that Plaintiff has alleged no facts which give rise to a claim be relied upon by the District Court to dismiss sua sponte pursuant to a lacking of subject matter jurisdiction.? The District Court clearly chose to dismiss this case for reasons other than those which could make minimal plausible sense.

There is no question that the defendants averred to all allegations in Petitioner's Complaint. There is no question the District Court had subject matter jurisdiction to determine that "Plaintiff has alleged no facts which give rise to a claim..."*APP-2* District Court had subject matter jurisdiction to dismiss for failure to pay sanction grounds. It had subject matter jurisdiction to reinstate and to transfer venue. It had subject matter jurisdiction to sit on the case for 1 year. It had subject matter jurisdiction to reach the merits of Petitioner's Claim. "If the district court determines that the plaintiff's claims are sufficiently substantial to invoke federal jurisdiction, the complaint, as previously noted, must be initially entertained by the district court." *Bell*, 327 U.S. at 681-82, 66 S.Ct. at 775-76. At this second tier, the complaint may be dismissed for failure to state a claim according to Rule 12(b)(6) only if "it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Hughes v. Rowe*, 449 U.S. at 9, 101 S.Ct. at 175 (citing *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 595, 30 L.Ed.2d 652 (1972)).

It is worth noting that one of the tree branches of the United States government disagrees with the District Court. Namely, the Department of Justice. There silence is unexplainable.

2. Since Congress promulgated 26 U.S.C. § 3402(a) which states that "except as otherwise provided in this section..." and that clearly section 3402(p)(3) is "in this section," whether a withholding agreement under section 3402(p)(3) provides a exception that section 3402(a) is to be guided by?

The Seventh Circuit Court of Appeals, without any argument by the government as to this defense, decided that 26 U.S.C. § 3402(a) mandated an employer take money owed an employee, without consideration of the contract between the employer and the employee.

Petitioner could not maintain employment without a contract. Petitioner chose not to allow deprivation of his property from his payment owed by the employer since the money potentially considered for withholding was not an amount due or owed by operation of law to the United States.

Section 3402(a) reads "(a) Requirement of withholding.- Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages **a tax**...."

Section 3402(p)(3) which is within section 3402 and is part of the exception thereto, provides that the "agreement" to withhold shall be just that, an agreement.

Petitioner chose not to agree and the agent for the government directed that if the "employer" did not withhold, over Petitioner's 3402(p)(3) exception, that the employer would be held liable for any tax owed by Petitioner. All of this was false and with reckless and intentional disregard to what both section 3402(a) and (p)(3) promulgated.

Both the District Court and Seventh Circuit Court of Appeals have ignored both section 3402(p)(3) as well as that part of section 3402(a) which promulgates the exception to "this section."

To make matters worse, the Seventh Circuit panel cited not

one single case anywhere in the United States which has ever addressed the issues raised by Petitioner. Then, knowing this, the panel sanctioned Petitioner and denied Petitioner's sanction request against Defendants finding the issue to be "frivolous."

Petitioner argues that section 3402(p)(3) is the exception to 26 U.S.C. § 3402(a) and that the District Court and Seventh Circuit Court of Appeals are in plain error. Furthermore, the government cannot interfere with a contract between an employer and an employee or otherwise section 3402(p)(3) would be of no meaning or value.

3. **Whether the Internal Revenue Service can direct a portion of a persons property to be taken from their pay absent any court judgment, an agreement to do so between the person making and the persons receiving the payment, and over that person's objections, when the Fifth Amendment guarantees "no person shall be deprived of their.... property without due process of law?**

Since no liability existed at the time Petitioner's property was taken by World of Powersports to which the claimed deprivation may otherwise attach, the United States had no claim over this property and the taking of said property violated the fifth amendments due process clause.

CONCLUSION

Petitioner respectfully request this Court, after it fully considers this Petition, enter an order reviewing this Case upon Writ of Certiorari and find Petitioner has been deprived of his property without due process in violation of the fifth amendment.

Respectfully Submitted

Brian L. Hilvety

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
DANVILLE/URBANA DIVISION

BRIAN L. HILVETY,

Plaintiff, Case No. 00-2044

WORLD OF POWERSPORTS, INC.,
MIKE JACKSON, and GARY BROWN,
in his official capacity as an employee of
the Internal Revenue Service,

Defendants.

ORDER

This matter is before the court on Plaintiff's Motion for Default Judgement (#11) against World of Powersports, Inc., (Powersports) and Plaintiff's Motion for Default Judgment (# 12) against Mike Jackson (Jackson), an employee of Powersports. Plaintiff filed a Complaint in this matter on November 8, 1999, against: (1) Powersports, his employer; (2) Jackson, the Powersports employee in charge of handling employee tax forms; and (3) Gary Brown, an employee of the Internal Revenue Service. Plaintiff is seeking an order prohibiting Defendants from withholding taxes from his paycheck, a return of the money which has already been withheld from his paycheck in taxes, and one million dollars in damages from the United States government for this alleged wrongful withholding. Defendants have failed to file an answer after being properly served with the Complaint and Summons. For the reasons that follow, Plaintiff's Motion for Default Judgment (# 11 and # 12) are DENIED and this case is dismissed for lack of subject

matter jurisdiction.

Federal Rule of Civil Procedures 12(h)(3) requires that "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Under the substantial doctrine, a federal court is required to dismiss a complaint for lack of subject matter jurisdiction "where the claims contained in the complaint are wholly insubstantial and frivolous." Warden v. Novol Nordicks of North America, Inc., No. 97 3976, 1998 WL 476126, At * 1(7th Cir. Aug. 6, 1998)(citing Ricketts v. Midwest Nat'l Bank, 874 F.2d 1177, 1180(1989)). The substantiality doctrine "spares the federal courts from having to entertain -merely because the defendant did not have the wit to point out the deficiencies in the plaintiff's case- litigation not reasonably grounded in federal law." Ricketts, 874 F.2d at 1181. For example, "[a] federal court should not be required to decide a dispute over an alleged fraud in the sale of bananas merely because the defendant fails to point out that bananas are not securities within the meaning of the Securities Exchange Act of 1934." Ricketts, 874 F.2d at 1181.

This Court finds the Plaintiff's complaint in the instant case absolutely devoid of merit. To the best understanding of the court, Plaintiff contends that the Fifth Amendment right against self incrimination prevents him from being required to sign federal tax forms, such as Form 1040 and form w-4. As a result, Plaintiff states he has not agreed to have wages withheld from his paycheck for taxes. Furthermore, Plaintiff believes he is not required to file any tax forms with the government and will never be liable for any Federal Income Tax for the wages he received from his employer because this would violate his fifth amendment rights against self-incrimination. Because plaintiff has alleged no facts which give rise to a claim which is even minimally plausible, this court lacks subject matter jurisdiction.

IT IS THEREFORE ORDERED:

(1) Plaintiff's Motions for Default Judgment (# 11 and # 12) are DENIED because this court lacks subject matter jurisdiction.

(2) This case is dismissed for want of subject matter

jurisdiction. The parties shall be responsible for their own costs.

ENTERED this 1st day of November, 2000

Michael P. McCluskey
U.S. District Court Judge.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Submitted June 18, 2001
Decided July 6, 2001

Before

Hon. Daniel A. Manion, Circuit Judge
Hon. Ilana Diamond Rovner, Circuit Judge
Hon. Terence T. Evans, Circuit Judge

No. 00-4113

BRIAN L. HILVETY
Plaintiff, Appellant

v.

WORLD OF POWERSPORTS, Inc. MIKE JACKSON, in his official capacity as an employee of World of Powersports, Inc., and GARY BROWN in his official capacity as an employee of the Internal Revenue Service
Defendant-Appellees.

Appeal from the United States District Court for For the Central District of Illinois

No. 00-2044

Michael P. McCuskey
Judge

ORDER

The Internal Revenue Code provides that an employer "making payments of wages shall deduct and withhold upon such wages a tax." I.R.C. § 3402(a)(10. Brian Hilvety believes, however, that his employer must obtain his consent to withhold payroll taxes and instructed his employer to cease making such

withholdings. After his employer refused to do so upon the advice of an IRS agent, Hilvety filed what he styled a "Petition for Writ of Prohibition/Mandamus, Injunction, Damages and other Declaratory Relief." In that "complaint," Hilvety sought an order enjoining his employer and one its employees form withholding taxes, enjoining a named IRS agent from directing his employer to withhold taxes, mandating his employer to return his prior withholdings, and awarding of $ 1,000,000 in damages under I.R.C. § 7433 for supposed unauthorized collection activities by the IRS. Before the defendants appeared of filed an answer, district court dismissed the complaint for lack of jurisdiction under the substantiality doctrine. We agree with the district court that Hilvety's complaint is "wholly insubstantial and frivolous" and therefore was subject to dismissal for lack of jurisdiction." See Gammon v. GC Servs. Ltd P'ship, 27 F.3d 1254, 1256(7th Circuit 1994).

That leaves the government's motion for sanctions against Hilvety under Rule 38 of the Federal Rules of Appellate Procedure for filing a frivolous appeal. Hilvety filed a response and has filed his own motion for sanctions against the government. We agree with the government that Hilvety's appeal is frivolous, and Hilvety's response does not convince us otherwise. We therefore grant the government's motion and impose sanctions in the amount of $ 2000. See Cohn v. Commissioner, 101 F.3d 486(7th Cir. 1996)(per curiam).

The judgment of the district court is AFFIRMED, the government's motion for sanctions is GRANTED, and Hilvety's motion for sanctions is DENIED.